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Supreme Court of the United States

OCTOBER TERM, 1946.

No. 491

BOSTON AND MAINE RAILROAD,
Petitioner,

v.

ELIZABETH B. MEECH, Admx.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

THOMAS H. MAHONY,
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Of Counsel
C. E. ROWE,
J. W. MEAD.

LAWYERS' BRIEF & PUBLISHING CO.
BOSTON, MASS.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

Statement of Case.

This is a petition for a writ of certiorari to the Circuit Court of Appeals for the First Circuit filed by the defendant-appellant therein to review an adverse decision by that court.

The respondent-plaintiff brought an action at law in the District Court for the District of Massachusetts, under the Federal Employee's Liability Act to recover compensation for herself and two minor children because of the tortious death on June 28, 1944 of her husband, an employee in the petitioner-defendant's railway in East Deerfield, Massa-

chusetts. The jury returned a verdict for the plaintiff in the District Court and the judgment entered therein was affirmed by the Circuit Court of Appeals upon exceptions saved by the petitioner-defendant.

Statement of Facts.

The deceased, Frederick E. Meech, an employee of the petitioner-defendant, was struck by one of its locomotives and killed on June 28, 1944 at its yards in Deerfield, Massachusetts. It was admitted that the deceased was engaged in interstate commerce within the meaning of Section 51 of Title 45 of U. S. Code Annotated and that the petitioner-defendant was also so engaged with reference to the locomotive causing the death (Charge to Jury, R. p. 103). He had been employed a few months as a machinist's helper in the Roundhouse (Kurtyka, R. p. 32; Aiston, p. 37; Emery, p. 44; Bibeau, p. 47) but at about 11:00 P. M. on June 27, 1944, he was ordered to work for the first time "stripping" locomotives (Kurtyka, R. p. 32; Aiston, pp. 38-39; Emery, p. 44; Bibeau, p. 48). There were two platforms, each some 6 feet wide and 97 feet long on either side of a track, or pair of rails. The one upon which Meech was working lay between two tracks, the nearer rail of one being some 1.6 feet away to the north, the nearer rail of the other being some 4 feet away to the south (Harvey, R. pp. 12-13). The easterly end of the platform was some 141 feet west of the roundhouse (Harvey, R. p. 17). Interstate locomotives which had finished their runs and which were about to go into this roundhouse stopped opposite these platforms or wash stands and the men assigned to "strip" them removed certain hand tools and equipment from the locomotives and stored them in a storehouse where they remained until the locomotive was

to make its next run (Aiston, R. p. 38; Fournier, p. 72). By reason of the proximity of the nearer rail of the northerly track of the platform upon which Meech was working at the time of the accident, parts of locomotives overhung this platform some 1.2 feet (Harvey, R. p. 16) and, anything standing within this area such as a lantern would be knocked down (Kurtyka, R. pp. 32, 33).

There was evidence that this was the first occasion that the deceased had been assigned to the task of "stripping" locomotives (Kurtyka, R. p. 32; Aiston, pp. 38-39; Emery, p. 44; Bibeau, p. 48) and that he had received no warning as to the dangers involved in the task by reason of the overhang of passing locomotives (Fournier, R. p. 78).

He had worked at this job for some two and one-half to three hours before the accident. There was no evidence as to how many locomotives, if any, Meech had stripped before the accident, and no evidence as to the tracks used by any such locomotives. At about 1:45 A. M. on June 28, 1944, he was standing on the platform or wash stand about midway of its length at the northerly side, looking to the southeast (Kurtyka, R. pp. 28-29, 35-36) toward another locomotive which was upon the southerly track and near the same platform. While in this position, a locomotive backed easterly upon the northern track and, without stopping at the platform, struck the deceased, dragged him some distance and killed him.

The "hostler", Moquin, who was operating the locomotive at the time and who was alone in its cab, was sitting upon the northerly or right side of the cab (Moquin, R. p. 51). By reason of this position and the load of coal upon the tender piled up to at least 7 feet, above the floor of the cab (R. p. 51) and the look-out house at the rear of the tender above the water tank, this "hostler" did not and could not see the platform upon which Meech was or see

anybody upon it (R. pp. 51-53). Although he knew that somebody was likely to be "stripping" at the platform and that other employees might be around there, he did not look at any time to see if anybody was upon the platform and at no time saw the deceased before the accident. This "hostler" drove the locomotive at a speed of about 2-4 miles per hour (R. pp. 52-53),—at which speed he could stop it in 1½ feet (R. p. 53)—without stopping until he had dragged the deceased some 10-20 feet beyond the easterly end of the platform, a total distance of 58-68 feet. There was evidence that no bell was rung but this was disputed. There was also evidence that no whistle was blown (Moquin, R. p. 58) and evidence of much loud noise in the vicinity made by moving and standing locomotives and particularly by reason of locomotives "popping" or blowing off steam (Kurtyka, R. pp. 32, 33, 35; Emery, p. 44; Bibeau, p. 48, Moquin, p. 55). Nobody rode in the rear end of the tender as a guard or watchman (Moquin, R. pp. 52-53).

The deceased was dragged to a point at least 10-20 feet beyond the easterly end of the platform (Dr. Moran, R. p. 24; Kurtyka, p. 36; Aiston, p. 40), and the dirt along the track was dug out by his shoes as he was dragged (Aiston, R. pp. 40-41; Dr. Moran, pp. 24-25; Emery, p. 44).

The deceased, thirty-five years old at the time of his death, left a widow then thirty-six years old (the administratrix) (Plaintiff, R. p. 20), and two children, a boy nine years old and a girl eleven years old at that time (Plaintiff, R. pp. 21-22).

At the time of his death the deceased earned $1,700 per year (Stip. R. p. 92) and turned over to the plaintiff his weekly pay of approximately $49.00 out of which she gave him some $3.00 or $4.00 for personal purchases (Plaintiff, R. p. 21).

Statutes Involved.

The statutes which are material to the issues raised by the appeal are as follows:

Employers Liability Act—U. S. Code Annotated, Title 45.

Section 51: Liability of common carriers by railroad, in interstate or foreign commerce for injuries to employees from negligence; definition of employees.

"Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter. Apr. 22, 1908, c. 149, sec. 1, 35 Stat. 65; Aug. 11, 1939, c. 685, sec. 1, 53 Stat. 1404."

Section 53: Contributory negligence; diminution of damages.

"In all actions hereafter brought against any such common carrier by railroad under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: Provided. That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee. Apr. 22, 1908, c. 149, sec. 3, 35 Stat. 66."

Massachusetts General Laws (Ter. Ed.), Chapter 231, Section 85, provides as follows:

"In all actions, civil or criminal, to recover damages for injuries to the person or property or for causing the death of a person, the person injured or killed shall be presumed to have been in the exercise of due care, and contributory negligence on his part shall be an affirmative defense to be set up in the answer and proved by the defendant."

Issues.

The errors specified by the petitioner are substantially as follows:

1. In stating with reference to Count I that the locomotive could have been operated more carefully such as assigning another man to it as a lookout; and sounding the whistle (Pet. pp. 4-5; Pet. Br. pp. 12-13; R. p. 126).

2. In ruling that the jury was warranted in finding negligence under Count I.
   A. In failing to sound a whistle (Pet. p. 5; Pet. Br. p. 13; R. pp. 125-126).
   B. In failing to have a lookout upon the locomotive (Pet. p. 5; Pet. Br. pp. 13-14; R. p. 126).
3. In stating with reference to Count 2 that the further precautions could have been taken such as the painting of warning lines on the platform to indicate the overhang of passing locomotives or setting the platforms further back from the tracks. (Pet. pp. 5-6; Pet. Br. p. 14; R. p. 126).
4. In ruling that the jury was warranted in finding a failure to furnish a reasonably safe place to work under Count 2.
   A. In failing to paint warning lines on the platform (Pet. p. 6; Pet. Br. p. 14; R. p. 126).
   B. In failing to set the platform further away from the track Pet. p. 6; Pet. Br. p. 14; R. p. 126).
5. In ruling that further precautions than those taken were possible warranting submission of the case to the jury (Pet. p. 6; Pet. Br. p. 15; R. p. 126).
6. In ruling that the 19th request for instructions was properly refused (Pet. p. 7; Pet. Br. p. 15; R. p. 127).
7. In similarly ruling as to the 27th request (Pet. p. 7; Pet. Br. p. 15; R. p. 127).
8. In affirming the judgment of the District Court (Pet. p. 7; Pet. Br. p. 15; R. p. 127).

Argument.

I. The Circuit Court of Appeals did not err in ruling that the jury was warranted in finding the petitioner negligent under Count I.

The Circuit Court of Appeals stated that "from his seat the hostler could not see a person standing where the decedent must have been standing when struck because of the obstruction to the range of his vision caused by the tender and the coal in it." (R. p. 125). Under the circumstances, it said that the locomotive "could have been operated more carefully," (R. p. 125) and that the jury could have found that the exercise of reasonable care required such additional precautions as assigning a lookout to a position on the locomotive where he could see the person in the position of the deceased, or sounding the whistle (R. pp. 124-125).

The evidence in the record is overwhelmingly in support of the propriety of this ruling.

1. Failure to see Meech.

Moquin, the locomotive hostler, admitted that he did not see the deceased at any time before the locomotive struck the deceased (R. p. 53), although the latter was in plain view and could readily be seen (Kurtyka, R. p. 30; Fournier, p. 71). Admittedly Moquin, from his position in the locomotive cab, could not see the platform upon which Meech stood or see anybody upon it (R. pp. 51-52). The position and size of the tender and the height of the coal piled upon it prevented Moquin from seeing a "stripper" or anybody else upon that platform (R. pp. 51-52). Yet Moquin took no steps to look out of the southerly or left side window of the cab nearest the platform as he approached and passed the platform (R. p. 53). If he did so before he started to back up, or as he was backing, he could have seen Meech and avoided colliding with him by the aid of his search light which threw a beam 800-900 feet ahead (R. pp. 63-64).

Exhibit 1 (R. p. 113) indicates that looking out the left window would have permitted a view of the north side of the platform at least. Moquin was driving the locomotive at a speed of 2-4 miles per hour and could have stopped it in 1½ feet (R. pp. 52-53). Although he testified that he was coming to a stop just about the time and place that Meech was struck (R. p. 53), other evidence showed that he did not stop until he had passed the easterly end of the 96 foot platform by 1-20 feet (Dr. Moran, R. p. 24; Kurtyka, p. 36; Aiston, p. 40) and dragged the deceased from where he stood midway of the platform a total distance of some 58-68 feet.

The petitioner's counsel argues at pages 24-26 of his brief that Moquin had no reason to anticipate that anybody would be upon the platform where Meech stood; that stripping locomotives was done only upon the other platform which was north of the track upon which Moquin was operating his locomotive, and only upon the engineer's or right side of the locomotive.

This argument is wholly unsound. There is no evidence that all locomotives to be stripped before entering the roundhouse always entered the roundhouse on the most northerly track (Exh. 1, R. p. 113). There is no evidence that locomotives were not stripped while on the southerly track. There is no evidence that all locomotives were always stripped by strippers working on the northerly wash stand or platform. There is no evidence that all locomotives on either track backed into the roundhouse. A locomotive on the northerly track entering the roundhouse head on would pass the platform upon which Meech stood with its right side or engineer's side toward Meech.

Some 8 or 10 men were accustomed to be in and about the scene of the accident every night (Fournier, R. pp. 79-

80). They had their lunches from 1:00 a. m. on (Fournier, R. p. 79). Moquin was chargeable with knowledge of this fact. The failure of Moquin to see Meech under the circumstances in this case is evidence which would warrant the jury in charging negligence to the defendant. His operation of the locomotive through the area without ascertaining that it was safe so to do is evidence of negligence.

N. Y. Central Ry. v. Marcone, 281 U. S. 345, 349, 350.

Gregory v. Maine Centr. R. R., 317 Mass. 636, 639.

2. Failure to warn Meech of approach of locomotive.

There was evidence that Moquin did not ring his bell or that if he rang it that it was not heard (Kurtyka, R. p. 31) although Rule 30 of the defendant provided for the ringing of the locomotive bell under such circumstances (R. p. 58). If the bell was not rung, it was evidence of negligence.

Tennant v. Peoria & Pekin Un. Ry., 321 U. S. 29, 33.

N. Y. Central R. R. v. Marcone, 281 U. S. 345, 349.

There was other evidence to the effect that more and other warning than the ringing of a bell was reasonably necessary and that no such other warning was given (Moquin, R. pp. 52, 54, 58). There was evidence of much loud noise near the platform and roundhouse made by moving and standing locomotives, particularly by their blowing off steam or "popping" (Kurtyka, R. pp. 32, 33, 35; Emery, p. 44; Bibeau, p. 48; Moquin, p. 55). Such evidence would warrant the jury in finding that the situation required more than bell ringing to warn the deceased of danger from an approaching locomotive and that the defendant was negligent in failing so to do.

N. Y. Central R. R. v. Marcone, 281 U. S. 345, 349, 350.

Gregory v. Maine Central R. R., 317 Mass. 636, 639.

3. Failure to take other precautions.

The jury might well have found from the evidence that, if Moquin sat on the right or northerly side of the cab because the throttle was upon that side (R. p. 50), then a man should have been placed on the left side of the locomotive or upon the leading end of the tender to warn Moquin of the presence of men on or near the track and to warn anybody working upon the platform of the approaching locomotive.

As was said in *New York Central RR. v. Marcone,* 281 U. S. 345, at 349:

> "Under all the circumstances disclosed by the evidence it was a permissible inference by the jury that the sounding of whistle and bell, because of the continuous noise of whistles and bells which did not indicate movement of engines, was not sufficient warning that any particular engine was to be moved, and that in fact the signal given before moving the engine in question was insufficient for that purpose."

See also,

Tennant v. Peoria & Pekin Un. RR., 321 U. S. 29, 34.

Gregory v. Maine Central Ry., 317 Mass. 636, 639.

Under these circumstances the District Court could not properly have directed the jury to return a verdict for the defendant upon this count.

The Circuit Court of Appeals, therefore, did not err in overruling the petitioner's exception and in ruling that there was evidence to submit to the jury on Count I.

For these reasons the petitioner's specifications of error numbered 1, 2 and 3, or (Pet. Br. pp. 12-13) are without merit.

The 4th specification (Pet. Br. pp. 13-14) is likewise without merit. The first count of the complaint is broad enough to cover other servants of the petitioner than the hostler Moquin. It alleges that the locomotive was "negligently operated by an employee or employees of the defendant, in that, among other things, they failed to see or to warn the said Frederic of the approach of said locomotive or to take any other means to avoid striking him." (R. pp. 2-3).

The 9th and 10th errors (Pet. B. p. 15) specified are likewise without merit.

The petitioner requested two instructions which it alleges were not given, to which refusal it excepted and which exceptions it argues in its brief. It is submitted that, so far as they were not given, they were properly refused by the District Court.

A. Request No. 19.

The 19th requested instruction is as follows:

> "The defendant owed no duty to have a lookout stationed on the rear of the tender as it was backing toward the washstand." (R. p. 118).

It is submitted that the District Court did not err in refusing so to instruct the jury for the following reasons at least:

1. It refers to a portion of the testimony only and singles out a particular issue, circumstance or fact which the District Court was not obliged to cull out from all the others.

Grand Trunk RR. v. Ives, 144 U. S. 408, 433.
Rio Grande Western RR. v. Leak, 163 U. S. 280, 287, 288.

2. It fails to take into consideration other evidence in the case, such as the likelihood of various employees being at the scene of the accident when it occurred; the position of Moquin in the locomotive cab and his inability to see the deceased by reason of his position, the size and structure of the tender and the height of the coal piled thereon; the failure of Moquin to look out from the southerly window of his cab; and the probable insufficiency of a bell warning to apprise persons, situated as the deceased was, of the approach of the locomotive.

Baltimore & Ohio RR. v. Whitacre, 242 U. S. 169, 171.

Gregory v. Maine Central RR., 317 Mass. 636.

N. Y. Central RR. v. Marcone, 281 U. S. 345, 350.

3. It was not necessary to adopt the particular wording of these requests, where, as here, without exception, the District Court instructed the jury accurately and adequately upon all material issues.

Sugarman v. U. S., 249 U. S. 182, 185.

Ayers v. Watson, 137 U. S. 584, 601.

4. The substance of the request, so far as it properly stated the law, was given by the Court in general terms (R. pp. 103-104).

Rio Grande Western RR. v. Leak, 163 U. S. 280, 284-285.

Grand Trunk RR. v. Ives, 144 U. S. 408, 433.

Sugarman v. U. S., 249 U. S. 182, 185.

B. Request No. 27.

The twenty-seventh request reads as follows:

"The defendant owed no duty to blow a whistle, it could only add to the confusion." (R. p. 118).

The respondent repeats the same argument in support of the refusal by the District Court to instruct the jury as

requested as has been made with reference to Requested Instruction No. 19, hereinabove.

While the District Court may comment on the testimony, it is not bound to do so and cannot be compelled to do so. The last clause of the instruction clearly is a charge on facts which the District Court was not required to give.

II. The Circuit Court of Appeals did not err in ruling that the jury was warranted in finding that the petitioner failed to furnish the deceased with a reasonably safe place to work under Count 2.

The Circuit Court of Appeals stated that the petitioner "might have painted lines on the platforms of its wash stand to indicate the extent to which locomotives overhang them and thus to warn persons on the platforms of the danger incident to standing near their inner borders, or it might even have set the platforms of its wash stand back from the tracks far enough to prevent locomotives from overhanging them at all." (R. p. 126).

Under the circumstances, it said that the jury might properly find that the failure so to do constituted a failure to furnish the deceased with a reasonably safe place to work (R. pp. 125-126).

The second count of the Complaint alleges the negligent failure of the defendant to furnish the deceased with a reasonably safe place to work and to warn him of dangers incidental to an unsafe place (45 U. S. C. A. S. 51).

There was ample evidence from which the jury might find the defendant negligent in this respect also.

It was the duty of the petitioner to furnish the deceased with a reasonably safe place to do his work or to warn him of dangers not obvious to him.

Blair v. Baltimore & Ohio RR., 65 S. C. R. 545, 547.
Bailey v. Centr. Vt. Ry., 319 U. S. 350, 351-352.
Mo. Pac. Ry. v. Aeby, 275 U. S. 426, 427-428, 430.
Washington Ry. & Electric Co. v. Scala, 244 U. S. 630, 640.

The word "works" in Section 51 of the Act has been held to include station platforms and inferentially a platform or wash stand such as is involved in the instant case.

Mo. Pacific Ry. v. Aeby, 275 U. S. 426, 427-428.

1. Unsafe place to work.

The platform or wash stand in question was so constructed that the nearer rail of the track to the north was but 1.6 feet from the edge of the platform (Harvey, R. p. 16). A locomotive upon this track projected over or overhung the northerly side of the southerly platform a distance of 1.2 feet (Harvey, R. p. 16). This overhang of locomotives was such that objects such as lanterns or oil cans which might be upon the platform within 1.2 feet of the northerly edge would be knocked down by passing locomotives (Kurtyka, R. pp. 32, 33).

This condition existed for some 17 to 24 years prior to the date of the accident (Aiston, R. p. 41; Fournier, pp. 71-72). Such a condition, permitted to continue for so long a time, was evidence of a negligent failure upon the part of the petitioner to furnish the deceased with a reasonably safe place to work.

Washington Ry. & Electric Co. v. Scala, 244 U. S. 630, 640.

The petitioner's counsel at pages 45 and 46 of his brief repeats the argument that locomotives only backed up on the northerly track and were stripped while on that

track. He cites Moquin's testimony on page 59 and Fournier's at page 72 as authority for his argument. Fournier's testimony does not compel the inference claimed.

The defendant's counsel, at page 48 of his brief, also repeats the argument that Meech worked on the northerly wash stand from 11:00 p. m. until about 1:45 a. m. when he was struck while on the southerly platform; and that Meech knew or must have known of the overhang of locomotives passing the southerly platform. The plaintiff's counsel repeats that there is no evidence which required any such finding by the jury. Bibeau's testimony (R. p. 48) would seem fairly to imply that Meech had been at all times on the southerly platform.

2. Failure to warn.

The evidence was such that the jury might well infer that the danger was not obvious to the deceased and that he should have been warned of it before he was sent to work on the platforms. There was evidence that the deceased was therefore employed by the defendant as a machinist's helper (Kurtyka, R. p. 32; Aiston, p. 37; Emery, p. 44; Bibeau, p. 47; Fournier, p. 68), that as such he worked generally in the roundhouse; that the night of the accident was the first time that he was assigned to the work of stripping locomotives at this platform (Kurtyka, R. p. 32; Aiston, pp. 38-39; Emery, p. 44; Bibeau, p. 48); that he began this work of stripping about 11:00 p. m. (Fournier, R. p. 68) and the accident occurred about 1:45 a. m. (Fournier, R. p. 80); that this entire period was during the darkness of night; that there was no white line or other danger line marking upon the platform the extent of the locomotive overhang (Kurtyka, R. p. 32); that he received no instruction and no warning whatever upon the evening of June

27, 1944 or the early morning of June 28, 1944, or at any other time relative to the danger resulting from the overhang of passing locomotives (Fournier, R. pp. 78-79).

The jury was not bound to believe Fournier's testimony that he had instructed and cautioned Meech some 8 or 12 days before the accident to "watch your step and be careful," the only instructions Fournier ever claimed to have given Meech (Fournier, R. pp. 69, 78-79) and that Meech had done stripping work at other times (Fournier, R. pp. 68-69). His testimony in cross examination furnished ample basis for the jury to find that this was untrue, that Meech had not done stripping before and was not warned of any danger when he first began such work upon the night of the accident (Fournier, R. pp. 75-78; Aiston, p. 92). Fournier admitted that he never cautioned Meech about the overhand of locomotives or of any danger to be anticipated therefrom (Fournier, R. pp. 78, 79).

The 5th, 6th and 7th errors specified are, therefore, without merit.

III. The Circuit Court of Appeals did not err in ruling that the case was properly submitted to the jury and by affirming the judgment of the District Court.

The Circuit Court of Appeals points out that the jury returned a general verdict (R. p. 124) and stated that the facts recited indicate "more than a scintilla of evidence * * * to support the verdict upon either count." (R. pp. 125-126). For the reasons stated above there was ample evidence to warrant the jury in finding for the deceased on either or both counts. The Circuit Court of Appeals properly ruled, therefore, that its function was exhausted and affirmed the judgment of the District Court (R. p. 126).

Lavender v. Kurn, Law Ed. Adv. Op. v. 90, No. 11, p. 692.
Blair v. B & O RR., 323 U. S. 600.
Tennant v. Peoria & P. U. RR., 321 U. S. 29.
Bailey v. Central Vt. RR., 319 U. S. 356.
Tiller v. Atl. Coast Line RR., 318 U. S. 54.

The 8th and 11th errors specified (Pet. Br. p. 15) are, therefore, without merit.

Conclusion.

The respondent submits that the Circuit Court of Errors did not err; that no sufficient evidence or argument has been presented to warrant or to require the granting of its petition; and that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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